

Ex Parte

August 20, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Applications of Qwest Communications International Inc. for Authorization Under Section 271 of the Communications Act.* WC Dockets No. 02-148 and 02-189

Dear Ms. Dortch:

By this letter, Qwest Corporation ("Qwest") hereby notifies the Federal Communications Commission ("FCC") that, pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, tomorrow it will file negotiated agreements as described below between Qwest and competitive local exchange carriers ("CLECs") for approval by the state commissions in Colorado, Idaho, Nebraska and North Dakota. This action generally supplements the plans previously announced by Qwest in its reply comments in WC Docket No. 02-148.

By way of background, Qwest has previously filed hundreds of agreements with CLECs under Section 252(e)(2). However, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the prior filing and approval requirements of Section 252.

Earlier this year questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of unfiled Qwest-CLEC contracts, that eleven of them should have been submitted to the Minnesota commission. Qwest promptly brought this matter to the attention of the FCC and the 13 other state commissions in the Qwest region. This action included providing each state commission with copies of any contracts or amendments cited by the DOC for CLECs that also operated in their state. Qwest requested that if the state commission viewed any contract as an interconnection agreement subject to a Section 252 filing obligation, that contract be approved as such. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in the context of various ILEC-CLEC contractual arrangements.

Furthermore, in May Qwest adopted a new policy for reviewing all new agreements with CLECs pending clarification of Section 252(a). Under this policy, Qwest is broadly filing all contracts, agreements, or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. A six-person team, including a lawyer from the regulatory department, oversees the contract review process and is responsible for every contract that Qwest enters into with a CLEC to determine whether to file it under Section 252. We believe this commitment goes well beyond the requirements of Section 252(a). For example, it reaches details of business-to-business carrier

relations that we do not think the Telecommunications Act requires first to be filed with and approved by state commissions. However, we are committed to follow this process until the FCC issues a decision on the appropriate line drawing in this area.

With regard to older agreements, Qwest naturally has been concerned about its potential penalty liability with regard to second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Qwest has no objection to offering all CLECs in a state the same going forward terms it gives under contract to one local carrier. However, Qwest does not concede that all contracts with CLECs require prior approval, and has been concerned that extending such offers might be read as an admission regarding the scope of Section 252's mandatory filing requirements.

That said, Qwest stated in its Reply Comments in WC Docket No. 02-148 that it would post on its web site all contracts with CLECs in states where it had Section 271 applications pending insofar as those contracts contained effective going forward obligations related to Section 251(b) and (c). Qwest also stated that it would make available such going forward terms to other CLECs under the same polices that apply under Section 252(i). *See* Qwest Reply Comments, WC Docket No. 02-148, at 131-32.

After additional consideration, Qwest is now taking a further step as a sign of its good faith by filing all such agreements under Section 252(e) in addition to posting them on its web site. Specifically, Qwest has reviewed all of its currently effective agreements with CLECs in Colorado, Idaho, Iowa, Nebraska and North Dakota that were entered into prior to adoption of the new review policy described above. Qwest already has filed appropriate agreements with the Iowa Utilities Board in accordance with the Board's recent order. Tomorrow Qwest will file in the remaining four states all such agreements that include provisions creating on-going obligations that relate to Section 251(b) or (c) which have not been terminated or superseded by agreement, commission order, or otherwise. Qwest will ask the respective commissions in these states to approve the agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). In conformation with the structure of Section 252, including the state-specific approval process, opt-in opportunities will be provided on a state-specific basis under Section 252(i) rather than on a region-wide basis.

For the state commissions' benefit, Qwest is marking, highlighting or bracketing those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, commission order, or otherwise. This should reduce the confusion that could otherwise arise given that these contracts were not prepared as interconnection agreements, sometimes cover multiple subjects, and are of various ages.

We will not ask the state commissions to decide whether any of these contracts, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The state commissions need simply approve those provisions relating to Section 251(b) or (c) under their Section 252(e) procedures, and Qwest will make the going forward provisions related to Section

251(b) or (c) available under Section 251(i). Thus, the state commissions may but need not at this time reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not. (The Iowa Board has previously made its own ruling on this question. Qwest has indicated that it does not agree with the determination, but is complying with it.)

Qwest is not filing for state commission approval its contracts with CLECs that do not contain provisions that relate to Section 251(b) or (c), or contain provisions relating to Section 251 that have been terminated or superseded by agreement, commission order, or otherwise. Qwest also is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services already provided for in approved interconnection agreements, such as signaling and call-related databases. (Parties may execute a form contract memorializing the provision of such services offered as described in the interconnection agreement.)

Qwest will request that the state commissions approve the agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that one or more of these agreements need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). (Provisions that do not relate to Section 251, that settle past carrier-specific disputes, or that are no longer in effect are not subject to Section 251(i) and this offering.) Should a state commission later conclude that a particular agreement did not have to be filed as a matter of law under Section 252, Qwest nevertheless will honor "opt-in" contracts made with CLECs prior to that decision. However, Qwest necessarily will reserve the right to terminate an "opt-in" arrangement (as well as the interconnection related provision in the contract with the initial customer) in the unlikely event that a state commission finds both that the originally filed contract is of the type that must be filed under Section 252, *and* that the particular term is not in the public interest.

Qwest is filing the relevant CLEC agreements in full, subject to the following actions intended to protect CLEC interests given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential. First, Qwest is redacting those contract terms that relate solely to the specific CLEC and do not create ongoing obligations, such as confidential settlement amounts relating to resolution of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers, particular facility locations, and CLEC end user customer information. Second, Qwest will ask state commissions to hold the submitted agreements under seal for a short period of time to allow the affected CLECs sufficient time to object to their public disclosure (except those that have been made public to date). Qwest will concurrently notify the CLEC parties to the non-public agreements of this filing and advise them of their opportunity to submit any objections regarding public disclosure to the state commission. Absent other state rules, Qwest is requesting that this confidentiality period be limited to seven days.

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Consistent with the discussion in its Reply Comments, Qwest also will be posting the filed agreements on the website it uses to provide notice to CLECs and announcing the immediate availability of the effective interconnection-related terms and conditions in the respective states. This will facilitate the ability of CLECs to request terms and conditions prior to the state commission's decision approving the agreements filed tomorrow. Qwest also will be sending CLECs operating in the states a general advisory notice that they can look to the web site for this information (through regular procedures for such notices). Qwest will remove an agreement from its web site when it has expired, when none of the terms remaining in effect create ongoing obligations as to matters related to Section 251 (b) and (c) of the Telecommunications Act, or in the event that a state commission concludes that the agreement is not subject to Section 252(a).

Furthermore, Qwest promptly will make similar filings in other states (and postings on its web site) where it has pending applications for authority to provide interLATA services under Section 271 (Montana, Utah, Washington and Wyoming). Qwest will advise the Commission when such filings have been made with the relevant states.

Qwest is taking this action as a good faith gesture pending further clarification of the scope of Section 252(a). Qwest does not concede that any of the affected agreements are of the kind that require prior filing and state commission approval. Qwest continues to believe that Congress did not intend all ILEC-CLEC contractual arrangements with a nexus to Section 251 to be formally filed for review, let alone those contracts that do not relate to Section 251 obligations. However, until the FCC rules on the matter, we will follow the course outlined above.

Respectfully submitted,

/s/ Melissa E. Newman
Vice President-Federal Regulatory
Qwest

cc: Michelle Carey
Michael Carowitz
Elizabeth Yockus